

808 KAR 10:430. Required filing for oil, gas, and mineral securities offerings relying upon the registration exemption in KRS 292.410(1)(i).

RELATES TO: KRS 292.410(1)(i)

STATUTORY AUTHORITY: KRS 292.410(1)(i)5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.410(1)(i)5 authorizes the commissioner to impose additional conditions and requirements for a particular class of issuers if appropriate in furtherance of the intent of KRS Chapter 292. The Commissioner of the Department of Financial Institutions has found that securities evidencing interests in oil, gas, and other minerals have resulted in numerous losses for investors and a significant rise in enforcement actions. The requirement of a filing to claim an exemption from registration will allow the Commissioner of the Department of Financial Institutions to become aware of offerings of securities of oil, gas, and minerals and provide investor protection by becoming involved earlier in the process. This administrative regulation establishes the filing requirements for a registration exemption for oil, gas, and mineral securities.

Section 1. Notice of Claim of Registration Exemption; Filing Requirements. To claim a registration exemption pursuant to KRS 292.410(1)(i) for any security that otherwise has available the securities registration exemption in KRS 292.410(1)(i) and evidences an oil, gas, or mineral interest, a person shall file a Notice of Claim of Exemption with the Office of Financial Institutions. The Notice of Claim of Exemption shall include the following:

- (1) A letter containing:
 - (a) A declaration that the KRS 292.410(1)(i) exemption will be relied upon;
 - (b) A statement as to which condition in KRS 292.410(1)(i)3 is satisfied;
 - (c) A representation that persons who receive commissions, finders fees, or other remuneration in connection with sales of securities are in compliance with KRS 292.330;
 - (d) A representation that the seller believes that all the buyers are purchasing for investment;
 - (e) A representation that each buyer will sign an appropriate "investment intent" letter, a copy of which shall be included with the claim of exemption, stating in part that the buyer is not taking with a view to distribution;
 - (f) A representation that the securities to be issued will bear an appropriate restrictive legend, a copy of which shall be submitted with the claim of exemption;
 - (g) A representation that the offerees and purchasers shall have access to information concerning the issuer and any persons significant to the success of the undertaking; and
 - (h) A representation that public advertising or solicitation shall not be employed in effecting the proposed transaction.
- (2) A copy of the articles of incorporation, bylaws, limited partnership agreement, or other organizational document which reflects the security holders' rights;
- (3) A prospectus, offering circular or memorandum making full disclosure of material facts, including a discussion of all salient risk factors, unless the document was not prepared, because the transaction satisfies the condition in KRS 292.410(1)(i)3a; and
- (4) Current financial statements of the issuer, which shall be filed with the notice and shall be contained in any disclosure document. (32 Ky.R. 1500; 1893; eff. 5-5-2006; TAm eff. 11-7-2012; Crt eff. 2-27-2020.)